

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RICK LARSEN, individually and on behalf
of all others similarly situated,
Plaintiffs,

v.

PTT, LLC, doing business as High 5 Games,
LLC; HIGH 5 ENTERTAINMENT LLC,
Defendants.

Case No. 3:18-cv-05275-TMC

ORDER GRANTING IN PART AND
DENYING IN PART DKT. 429 AND DKT.
434 MOTIONS TO SEAL

I. INTRODUCTION AND BACKGROUND

Before the Court are Defendant High 5 Entertainment's ("H5E") motion to seal and to file redacted exhibits (Dkt. 429) and Plaintiff Rick Larsen's motion to seal (Dkt. 434). The documents at issue are:

- (1) an unredacted version of Exhibit 1 (excerpts of transcripts of the Rule 30(b)(6) deposition of the Defendant entities) to the Declaration of Craig Stewart in Support of H5E's Motion for Summary Judgment (Dkt. 427-1; 430-1) (the "deposition excerpts");
- (2) Exhibits 7 and 9–17 to the Declaration of Craig Stewart in Support of H5E's

- 1 Motion for Summary Judgment (Dkt. 427-7, 427-9–17) (the “redacted exhibits”);
- 2 (3) Unredacted versions of Exhibits 1, 17, and 18 to the Declaration of Lauren
- 3 Blazing in support of Larsen’s Motion for Permanent Injunction (Dkt. 438-1, 438-
- 4 4–5) (the “permanent injunction exhibits”);
- 5 (4) Unredacted versions of Exhibits 8 and 9 to the Declaration of Lauren Blazing in
- 6 support of Larsen’s Motion for Partial Summary Judgment (Dkt. 435-2–3) (the
- 7 “partial summary judgment exhibits”); and
- 8 (5) Unredacted versions of Larsen’s Motion for Permanent Injunction (Dkt. 435) and
- 9 Motion for Partial Summary Judgment (Dkt. 438) and H5E’s Motion for
- 10 Summary Judgment (Dkt. 430).

11 The deposition excerpts contain discussion of H5E’s corporate and ownership structures

12 and company histories. *See, e.g.*, Dkt. 430-1 at 3–6, 9, 12–15. The redacted exhibits include

13 individual purchase records of Plaintiff Larsen (Dkt. 427-7), customer service inquiries (Dkt.

14 427-9–15), and High 5’s communications with advertising vendors (Dkt. 427-16–17).

15 Consistent with Local Civil Rule 5(g), as a party “wishing to file a confidential document

16 it obtained from another party in discovery,” H5E filed its motion to seal the document

17 designated confidential by Larsen (Dkt. 427-7) but H5E’s position is that the materials do not

18 warrant sealing. *See* W.D. Wash. Local Civ. R. 5(g)(3). “[T]he party who designated the

19 document confidential must satisfy” those standards “in its response to the motion to seal or in a

20 stipulated motion” (*id.*), but Larsen withdrew his confidentiality designation of Dkt. 427-7 after

21 conferring with H5E, and instead provided H5E a redacted version of the document.

22 The permanent injunction exhibits include messages High 5 customers sent to customer

23 service representatives and deposition testimony from Larsen regarding gambling addiction.

24 Dkt. 438-1, 438-4–5. The partial summary judgment exhibits include an advisory legal opinion

1 commissioned by High 5 (Dkt. 435-2) and an independent auditor’s report on High 5’s finances
2 (Dkt. 435-3). Consistent with Local Civil Rule 5(g), as a party “wishing to file a confidential
3 document it obtained from another party in discovery,” Larsen filed its motion to seal the
4 documents designated confidential by High 5 (Dkt. 435-2–3) but takes no position on whether
5 the materials require sealing. *See* W.D. Wash. Local Civ. R. 5(g)(3). “[T]he party who
6 designated the document confidential must satisfy” those standards “in its response to the motion
7 to seal or in a stipulated motion.” *Id.* H5E has asserted that the partial summary judgment
8 exhibits contain sensitive legal research in the form of a commissioned legal opinion, and
9 complete financial statements that comprise sensitive internal business and financial information
10 unrelated to the public’s understanding of this litigation. Dkt. 448.

11 II. DISCUSSION

12 A court considering a sealing request starts with “a strong presumption in favor of access
13 to court records.” *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003).
14 A party seeking to overcome this presumption and seal court records relating to a dispositive
15 motion must provide “compelling reasons” that are “sufficiently specific” for doing so.
16 *Kamakana v. City & Cnty. Of Honolulu*, 447 F.3d 1172, 1183 (9th Cir. 2006). The Ninth Circuit
17 has recently reminded district courts that any decision ordering the sealing of records must offer
18 “compelling reasons and specific factual findings,” and that a district court abuses its discretion
19 when it fails to articulate both requirements. *Drammeh v. Uber Technologies, Inc.*, No. 22-
20 36038, 2024 WL 4003548, at *3–4 (9th Cir. Aug. 30, 2024).

21 A. Deposition Excerpts

22 The deposition excerpts generally discuss High 5 and H5E’s corporate and ownership
23 structures and company history. Although it contains some broad discussion of the companies’
24 valuation, the information lacks detail, and the Court has already unsealed similar testimony. *See*

1 Dkt. 350 at 3. H5E's one-sentence assertion that information about the valuation of itself or High
2 5 could be used unfairly by competitors is conclusory and not supported by a specific factual
3 basis. The companies' respective valuation is also relevant to the merits of the pending
4 dispositive motions. The strong presumption in favor of public access outweighs the business
5 concerns H5E expresses over the general information contained in the deposition excerpts.
6 Accordingly, H5E's motion to seal (Dkt. 429) is DENIED IN PART as to the deposition excerpts
7 (Dkt. 427-1; Dkt. 430-1).

8 **B. Redacted Exhibits**

9 The first of the redacted exhibits contains Plaintiff Larsen's personal purchase history.
10 Dkt. 427-7. Plaintiffs' counsel has redacted Larsen's credit card numbers, personal email
11 address, and limited records of purchases unrelated to the topic of this litigation. *See, e.g., id.* at
12 3–144, 146, 179. The Court finds that Larsen has a compelling privacy interest in this
13 information, and because the information has no relevance to the substance of this case, his
14 privacy interest outweighs the public's interest in access to court records. H5E's motion to seal
15 Dkt. 427-7 is GRANTED, and this exhibit will remain in redacted form.

16 The second set of redacted exhibits are documents that contain personally identifying
17 information of High 5's customers. Dkt. 427-9–427-15. The Court finds that the customers have
18 a compelling privacy interest in their personally identifying information, and that because the
19 information is not relevant to the merits of this litigation, their privacy interest outweighs the
20 public's interest in access to court records. H5E's motion to seal these exhibits is GRANTED,
21 and they will remain in redacted form. *See, e.g., Silver Fern Chem., Inc. v. Lyons*, No. 2:23-cv-
22 00775-TL, 2023 WL 4624477, at *2 (W.D. Wash. July 19, 2023) (explaining that courts
23 regularly seal information to protect "customers whose identities are not generally known to the
24

1 public and who have an interest in maintaining their privacy” when the information is
2 “inconsequential to the merits of the underlying dispute” (cleaned up)).

3 The third set of redacted exhibits are partially redacted contracts between High 5 and
4 advertising platforms. Dkt. 427-16, 427-17. H5E has not offered a factual basis for why these
5 exhibits should be sealed. *See* Dkt. 429 at 3. H5E’s motion to seal these exhibits is DENIED, and
6 H5E is ORDERED to file unredacted copies of these exhibits within 7 days of this Order’s entry.

7 **C. Permanent Injunction Exhibits**

8 The permanent injunction exhibits (Dkt. 438-1, 438-4, 438-5) are unredacted versions of
9 publicly-filed exhibits that contain personally identifying information of High 5’s customers
10 such as email addresses, home addresses, and usernames. For the reasons previously explained,
11 the Court agrees with the parties that there is a compelling privacy interest in sealing this
12 information that outweighs the public’s interest in accessing court records. Accordingly,
13 Larsen’s motion to seal (Dkt. 434) is GRANTED IN PART as to the unredacted permanent
14 injunction exhibits (Dkt. 438-1, 438-4–5) and these exhibits will remain under seal.

15 **D. Partial Summary Judgment Exhibits**

16 The partial summary judgment exhibits contain an advisory legal opinion commissioned
17 by High 5 discussing the same legal questions examined by the Court in this litigation (Dkt. 435-
18 2) and an independent auditor’s report regarding High 5’s financial statements (Dkt. 435-3).

19 High 5 and H5E have not offered a specific factual basis or compelling reasons for
20 sealing the commissioned legal opinion. They concede the document is not protected by
21 attorney-client privilege and that it was shared with third parties. Dkt. 448 at 2–3. They offer
22 only the conclusory statement, unsupported by evidence, that “[t]his information could be used
23 unfairly by competitors to harm High 5’s business interests.” This is insufficient to meet the
24 compelling reasons standard. Larsen’s motion to seal (Dkt. 434) is DENIED IN PART as to the

1 exhibit at Dkt. 435-2 and this exhibit will be ordered unsealed.

2 In contrast, High 5 and H5E have provided a sufficient factual basis and authority for
 3 sealing the exhibit at Dkt. 435-3, which contains High 5’s “complete and audited consolidated
 4 financial statements from 2022.” Dkt. 448 at 3. The Court finds that this exhibit contains detailed
 5 information on High 5’s assets, liabilities, revenues, costs, cash flow, and equity that could harm
 6 High 5’s business interests if made public and goes beyond what is related to the public’s
 7 understanding of this litigation. High 5 has a compelling interest in keeping this material
 8 confidential, and that interest outweighs the public interest in access to court records. *See Clean*
 9 *Crawl, Inc. v. Crawl Space Cleaning Pros, Inc.*, No. C17-1340-BHS, 2019 WL 6829886, at *1–2
 10 (W.D. Wash. Dec. 13, 2019) (sealing documents containing “specific historical, present, and
 11 projected financial data,” “sales and distribution figures, and financial figures and projections”).
 12 Larsen’s motion to seal (Dkt. 434) is GRANTED IN PART as to Dkt. 435-3.

13 **E. Larsen’s Motion for Permanent Injunction, Larsen’s Motion for Partial**
 14 **Summary Judgment, and H5E’s Motion for Summary Judgment**

15 There is “a strong presumption in favor of access to court records” (*Foltz*, 331 F.3d at
 16 1135) and a party seeking to overcome this presumption must provide “compelling reasons” that
 17 are “sufficiently specific” for doing so. *Kamakana*, 447 F.3d at 1183. Larsen moves to file under
 18 seal unredacted copies of his Motion for Permanent Injunction and Motion for Partial Summary
 19 Judgment because they contain brief references to information contained in sealed exhibits.

20 On the Court’s review of the redactions, the references to sealed material are isolated,
 21 brief, and limited to material that goes to the merits of the dispositive motions. The Court finds
 22 that these minimal references do not present the same risk of harm to privacy or business
 23 interests as the sealed exhibits in their entirety, and there are not compelling reasons for keeping
 24 this information sealed from the public. Accordingly, Larsen’s unredacted Motion for Permanent

1 Injunction (Dkt. 435) and Motion for Partial Summary Judgment (Dkt. 438) will be unsealed,
2 and Larsen's motion to seal those motions is DENIED.

3 H5E's motion to seal its own Motion for Summary Judgment was based solely on a
4 reference in that motion to material contained in the exhibit at Dkt. 430-1, which the Court has
5 already ordered unsealed. H5E's motion to seal the unredacted version of its summary judgment
6 motion is DENIED.

7 **III. CONCLUSION**

8 For the reasons explained above, the Court ORDERS as follows:

- 9 • High 5's motion to seal (Dkt. 429) is GRANTED IN PART and DENIED IN
10 PART. The Clerk is directed to UNSEAL the documents at Dkt. 430 and 430-1
11 and High 5 is directed to file unredacted versions of Dkt. 427-16 and 427-17
12 within 7 days of this Order's entry.
- 13 • Larsen's motion to seal (Dkt. 434) is GRANTED IN PART and DENIED IN
14 PART. The Clerk is directed to UNSEAL the documents at Dkt. 435, 435-2, and
15 438.

16 Dated this 6th day of September, 2024.

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19 Tiffany M. Cartwright
20 United States District Judge
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